

11-08-05

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## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.: 10/027,394  
Filing Date: 12/21/2001  
Applicant: Bruce G. Kania  
Title: Treatment Devices Providing Targeted Antimicrobial Action  
Examiner/GAU: Kim M. Lewis/3743

**PROVISIONAL ELECTION**

The Honorable Commissioner for Patents  
Washington, District of Columbia 20231

Dear Sir:

This Provisional Election is being resubmitted with a Claims Listing in accordance with the Office communication received from the examiner dated November 1, 2005. The examiner has requested a complete listing of the claims including withdrawn claims 28-39. For the record, claims 28-39 were deemed withdrawn as per the examiner's July 12, 2005 Office Action, thus leaving 27 pending claims in this application.

The applicant would also note that a substantive Office Action was issued with respect to claims 1-27 on November 30, 2004. In the Office Action, claims 1-11 were allowed, claims 12-16, 18-20, and 22-27 were rejected, and claims 17 and 21 were objected to. The applicant responded to that Office Action on December 21, 2004, with an Amendment and Response to Non-Final Office Action. In the response to the Office Action, the applicant amended claims 12-20, thereby, in the applicant's view, placing claims 12-27 in condition for allowance. The applicant has not received any further substantive correspondence from the examiner concerning the Amendment and Response

to Non-Final Office Action submitted nearly a year ago. Instead, the applicant received a second restriction requirement dated July 12, 2005, to which the applicant responded on August 11, 2005.

The applicant would also note that the applicant received a Notice of Non-Compliant Amendment dated March 23, 2005. The Notice stated that the applicant had failed to provide status identifiers for each claim and had not underlined the newly added text, when in fact the applicant had provided status identifiers for each claim and had underlined the newly added text in connection with the December 21, 2004 amendment. The applicant resubmitted a copy of the December 21, 2004 amendment to the patent office on April 15, 2005. On April 25, 2005, the applicant again received a Notice of Non-Compliant Amendment. The applicant contacted the examiner by phone to explain the error on the part of the patent office, and the patent office withdrew the Notice of Non-Compliant Amendment on April 28, 2005.

In response to the Official Action mailed July 12, 2005, Applicant provisionally elects, with traverse, Group I, Claims 1-11 for further reexamination on the merits in the present application.

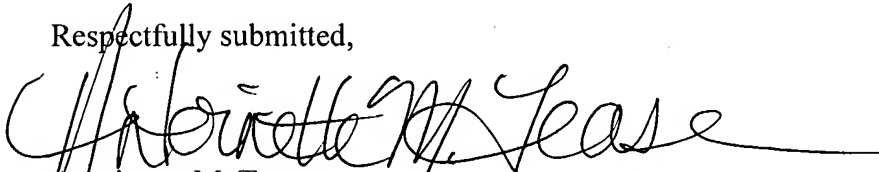
Applicant respectfully traverses the restriction requirement because the PTO has not carried forward its burden of proof to establish distinctness. In particular, MPEP § 803 states:

If the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions.

The claims of the present invention would appear to be part of an overlapping search area.

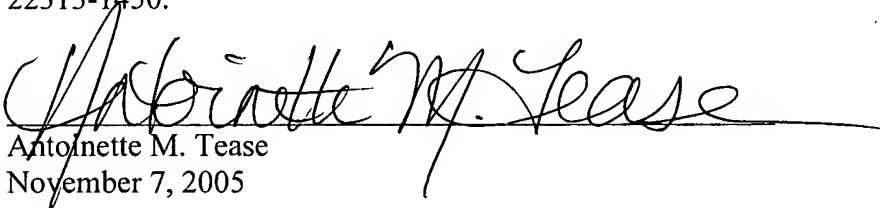
Accordingly, Applicant respectfully traverses the outstanding election requirement on the grounds that a search and examination of the entire application would not place a *serious* burden on the examiner.

Respectfully submitted,



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**Certificate of Mailing:** I certify that on the date below this document and referenced attachments, if any, were deposited with the U.S. Postal Service as Express Mail in an envelope addressed to: "Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450."



Antoinette M. Tease  
November 7, 2005